



Comptroller General
of the United States

Washington, D.C. 20548

Ms. Williams

Decision

Matter of: Innovations In Control

File: B-241153.2

Date: March 8, 1991

Nidal Jedeed for the protester.

John R. McCaw, Esq., Federal Aviation Administration, for the agency.

Paula A. Williams, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation is found defective after award because the specifications were misleading and did not adequately reflect the government's needs, agency reasonably determined to terminate contract and resolicit for the requirements rather than make award to the protester.

DECISION

Innovations In Control protests the decision of the Federal Aviation Administration (FAA) to resolicit the requirements under request for proposals (RFP) No. DTFA14-89-R-22849, rather than to make an award to Innovations, after terminating a contract awarded to Systems Atlanta, Inc. The FAA terminated the contract for convenience on October 26, 1990, subsequent to the filing of a protest by Innovations,^{1/} after the agency determined that the award to Systems Atlanta was improper because the solicitation was defective and the award procedures were flawed. Innovations contends that the agency's decision to resolicit the requirements is a subterfuge to avoid making award to the protester.

We deny the protest.

^{1/} After learning of the award to Systems Atlanta, Innovations had protested to our Office, arguing that the FAA failed to evaluate proposals in accordance with the solicitation and that it would be in line for award had proposals been properly evaluated.

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The procurement is part of the National Airspace System Plan under which the FAA intends to upgrade equipment at all FAA Air Traffic Control Towers. The solicitation sought offers to furnish automated information display systems consisting of a master station and site-specific primary and secondary stations at air traffic control towers. The RFP advised that the agency intended to award a requirements contract to the proposal most advantageous to the government.


Systems Atlanta and Innovations were the only two firms that submitted offers. A technical evaluation panel evaluated the technical proposals and found only Systems Atlanta's proposal technically acceptable. Although the FAA conducted discussions with Innovations (but not with Systems Atlanta), best and final offers were never requested and award was subsequently made to Systems Atlanta on the basis of initial proposals.

Innovations objects that the FAA's decision to terminate the contract and resolicit is simply an attempt by the agency to avoid answering Innovations' original protest. In its agency report, the FAA detailed the reasons for the decision to terminate and resolicit, and in its comments, Innovations does not address the validity of these reasons. Instead, Innovations merely realleges that the award to Systems Atlanta was improper and argues that it is entitled to award under the original solicitation because its proposal offers "superior techniques at a lower cost." We find this argument without merit.

The FAA decided to terminate Systems Atlanta's contract and resolicit because, among other reasons, the RFP specifications were inadequate and ambiguous and did not adequately reflect the actual needs of the agency. In particular, the agency's needs included equipment installation, spare parts and training associated with the systems, and the RFP separately specified these related requirements. However, the RFP only called for pricing of the systems, and explicitly provided that prices for related requirements not be included in initial proposals. In addition, the RFP contained a requirement which does not accurately reflect the agency's actual needs with respect to the graphics capability of the systems. Innovations does not dispute that the RFP was deficient in these respects; it merely argues that its proposal was not properly evaluated. Since the RFP did not accurately reflect the agency's minimum needs, the agency had a reasonable basis to terminate Systems Atlanta's contract, and we have no reason to object to the agency's decision to assure that it would satisfy its actual needs by canceling the RFP and resoliciting the requirement under a revised RFP. See ACR Elecs., Inc., B-232130.2; B-232130.3, Dec. 9, 1988, 88-2 CPD ¶ 577.

While the agency decided to terminate System Atlanta's contract and to cancel the RFP after Innovations protested, this by itself does not show that the decision to cancel was made only to avoid resolving Innovations' original protest. An agency may properly cancel after award no matter when the information precipitating cancellation first surfaces. Chrysler Corp., B-206943, Sept. 14, 1982, 82-2 CPD ¶ 271. Since the cancellation was properly based on the agency's desire to ensure that it would satisfy its minimum needs, we have no basis to conclude that the FAA's decision to cancel and resolicit was made, as Innovations assumes, merely as a pretext.

The protest is denied.


for James F. Hinchman
General Counsel